DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

JLP:ddj
Docket No: 5894-99
24 October 2000

MR [redacted] USN

Dear MR [redacted]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by BUPERS memorandum 1920 SER 834D/783 of 26 June 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1920
Ser 834D/783
26 Jun 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: FORMER MBR [redacted] MC, USN, [redacted]

Ref: (a) BCNR memo 5420 Pers-00ZCB of 21 Jun 00

Encl: (1) BCNR Case File #05894-99 w/Microfiche Service Record

1. Reference (a) requested comments and recommendations regarding former LT Vonriedenauer's request for correction of his record. He will hereafter be referred to as "the respondent." Enclosure (1) is returned as a matter under your purview.

2. The respondent was separated by PERS-253 (now PERS-813). PERS-834 has no records regarding this case.

3. The respondent has provided some information that bears comment. The comments will correspond to the items listed in block 10 of his DD Form 149.

(1) The separation program designator (FBK) assigned on his original DD-214 is clearly in error, since, at the time of his separation he was under obligation due to his education at the Uniformed Services University of Health Sciences (7 year obligation, non-recoupable), the Naval Underwater Medical Institute (2 year obligation, non-recoupable) and receipt of Additional Special Pay (1 year obligation, recoupable). This error, and the fact that PERS-253 is the point of contact listed on his separation orders, shows that his case was inappropriately processed by PERS-253 when in fact it should have been processed by PERS-8. Since nearly all officers separated by PERS-253 have completed their required obligated service, the standard orders issued by PERS-253 used FBK as the separation program designator (SPD) code and do not contain language regarding recoupment. The fact that his case was processed by the wrong office code and that his separation orders and DD-214 were incorrect does not grant him any "sanctuary" from recoupment or indicate any "forgiveness" of his debt. He was and is still legally liable for recoupment, and a DD-215 is necessary to ensure his DD-214 is accurate and reflects the actual conditions of his separation.

(2) There is no legal requirement for separation orders to contain the phrase "member has not completed required active service." Including this phrase in separation orders was a policy of PERS-8, which, as explained in (1) above, did not process his case. The absence of this phrase in his separation orders does not provide any legal rights or preclude any legal obligations. More importantly, the absence of this phrase does not alter the fundamental fact of his case: He had not completed his required obligated active service.

(3) The different designator code indicates only that his designator was changed in the central computerized record at BUPERS. This data field is not even entered when separation orders are written. Instead, it is automatically inserted when the orders are generated by the computer. The statements "The Navy clearly represents that I was discharged with a full understanding of the obligation of release...by witness to the clear and accurate correction of my officer designator code" and "The Navy fully understood that they were discharging a USUHS graduate without further financial or military obligation" are meaningless and incorrect. The first statement attempts to relate two unrelated items and the second implies that an order-writing technician has the authority to waive requirements of Title 10 of the United States Code on behalf of the Navy.

(4) Captain Eckert's memorandum explained PERS-8 policy only. As previously explained, the respondent's case was not processed by PERS-8 and thus compliance with PERS-8 policy would naturally be very unlikely. Whether PERS-4 notified PERS-253 of the requirement to recoup, whether recoupment language was contained in the separation orders, and whether BUPERS holds documentation to answer those questions are all immaterial. The undisputed conditions of the respondent's separation show that he voluntarily separated four months prior to completion of service to which he was contractually obligated. The law requires recoupment of ASP funds in this case, and possession of orders that do not require recoupment is not tantamount to holding a "get out of jail, free" card. No "adjustments" were made based on personal conjecture or supposition; rather, an obvious error was corrected using the most appropriate method.

(5) The respondent goes to great length to distinguish between a "hardship" discharge and a discharge for the good of the service. This issue is not in dispute. Had he received a discharge for the good of the service, his separation would have been characterized as Other Than Honorable or General. He was

separated for the Convenience of the Government; however, the reason for the separation remains in dispute and neither party can produce official paperwork to resolve this issue. Again, the reason for separation is immaterial. By his own admission, the respondent voluntarily separated on 15 Feb 95 even though he had a contract that required service until 1 Jul 95 due to his receipt of $15,000 Additional Special Pay. His contract plainly states "In the event of termination, I must repay unearned ASP on a pro rata basis." Thus recoupment of 37.5% (4 ½ months out of a 12 month obligation were not served) of the $15,000 or $5,625 would have been appropriate, regardless of the reason for separation.

(6) The service obligation due to attendance at Naval Undersea Medical Institute was not "forgiven." Rather, there are no requirements to recoup for this training, and thus no effort was made to recoup the cost of this training. The concept of "forgiving" obligated service is mythical. If conditions warrant recoupment, recoupment will be initiated. Only the Secretary of the Navy is empowered to waive recoupment of educational costs.

(7) A more precise statement would have been "it appears that PERS-253 followed their own standard operating procedures at a time that the procedures of PERS-8 should have been followed." Separating an officer due to "completion of required active service" at a time when the officer has more than 9 years of remaining obligated service is a strong indicator that appropriate procedures were not followed. Thus, by the respondent's own logic, since standard procedures were not followed, recoupment must have been desired. Whether or not recoupment was desired prior to separation is immaterial. By law, recoupment was required and thus appropriate.

(8) The characterization of the respondent's discharge is not disputed. Recoupment is appropriate because some obligated service was unserved. Additionally, the discharge certificate does not indicate a SPD code and issuance of a discharge certificate is not contingent upon payment in full of all obligations to the United States Government. Thus, possession of a valid Honorable discharge certificate does not indicate that administrative processing is complete.

(9) Recoupment of Additional Special Pay cannot just be "forgiven." The Secretary of the Navy may waive the requirement to recoup, but since the respondent has not provided any documentation that indicates recoupment was waived, and since waiver of recoupment is extremely rare, it can be assumed that no

waiver was granted.

(10) The DFAS statement provided by the respondent shows a balance of $3,764.11. This indicates that no attempt was made to recoup the cost of his education at USUHS (the initial balance would have been near $100,000) or his education at NUMI (the initial balance would have been near $20,000). It does indicate that recoupment of his ASP was ordered, as appropriate (the initial balance would have been $5,625). Additionally, in 1995 DFAS only initiated recoupment for ASP after being requested to do so by BUPERS. Now (since the implementation of DJMS) recoupment of ASP is automatically initiated whenever an officer is separated prior to fulfillment of his contractual obligation.

(11) The respondent should not be required to repay the cost of his education at USUHS. Title 10 section 2114 of the United States Code prohibits recoupment of the cost of this education. However, the statement that "The Navy's expressed, written and ordered policy was to discharge me from the US Navy without further financial or service obligations." is incorrect and is not supported by any documentation presented by the respondent.

(12) BUPERS cannot comment on actions at his final command, however, pursuing recoupment to which the respondent is legally and contractually obligated cannot be considered harassment.

(13) The respondent has not provided any evidence that he has repaid the prorated portion of his Additional Special Pay, nor has he shown that the government has initiated recoupment for the cost of his education at USUHS. The Chief of Naval Personnel's senior legal advisor has a duty to ensure that personnel policies are followed as closely as possible. Issuance of a DD-215 to correct an obvious mistake is not only within his authority, it is required.

4. In summary, based only on the documentation provided by the respondent,

a. The respondent is not a victim of harassment. He left the Navy with an obligation to which he is still legally bound. Actions by Navy Personnel, as detailed by the respondent, have been appropriate; indeed, these personnel have been fulfilling their duty to protect the integrity of administrative separation processing and uphold the law.

b. The respondent's case was inappropriately processed at the time of his separation, but that did not absolve him of his legal

obligations. Unless the respondent can provide a document signed by the separation authority that states a reason for separation other than Secretarial Authority, the DD-215 remains the most appropriate way to correct this mistake.

c. A DD-215 should be issued to reflect the fact that the respondent did not complete his required obligated service. Changing the SPD code to FFF is appropriate because this action was initiated by the Chief of Naval Personnel. Since no details of his resignation remain on file, a more specific SPD code cannot be granted.

d. Unless the respondent can produce a document that explicitly waives recoupment, the respondent should be required to reimburse the government for a portion of his Additional Special Pay (approximately $5,625).

e. The respondent should not be required to reimburse the government for the cost of his education at USUHS (approximately $100,000) or at NUMI (approximately $20,000).

5. PERS-834 Point of Contact is LCDR Keith Lindsey, 874-4420.

P. S. POSEY
CDR, U.S. Navy
Head, Officer Performance Branch